

### REMARKS

Applicant has carefully reviewed the Office Action mailed on December 10, 2007 and the references cited therein and respectfully submit the following remarks. Claims 1 and 3-13 are currently pending. The Examiner has rejected claims 1-13. Claims 1, 3 and 5 are currently amended and claim 2 is cancelled. In view of the foregoing amendments and following remarks, allowance of this application is most respectfully requested.

#### I. REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

The Examiner has rejected claims 1-6 and 8-13 under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. Specifically, the Examiner states that “it is not clear what is exactly encompassed by ‘derivative’ of lecithin” and that “[n]umerous compounds could possibly be derived from lecithin including simple elements like carbon and hydrogen.” Office Action of December 10, 2007 at page 2. Applicant respectfully disagrees with the Examiner’s position and respectfully submits that the claims are definite for at least the following reasons.

The essential inquiry pertaining to the requirement for definiteness is whether the claims set out and circumscribe a particular subject matter with a *reasonable* degree of clarity. Definiteness of claim language is analyzed, not in a vacuum, but rather in light of the content of the particular application disclosure, the teachings of the prior art; and the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made. MPEP 2173.02.

Applicant respectfully submits that the term “derivative” is a common term that would be readily understood by a person of ordinary skill in the art. The term “derivative” has the well understood meaning to a person of ordinary skill in the art of a compound that is related to a parent substance by simple chemical processes and in which the core or skeleton

of the parent substance is still recognizable. For example, Van Nostrand's Scientific Encyclopedia provides the following definition for derivative:

**DERIVATIVE:** 1. A term used in organic chemistry to express the relation between certain known or hypothetical substances and the compounds formed from them by simple chemical processes in which the nucleus or skeleton of the parent substance exists. Thus phenol, aniline and toluene are derivatives of benzene, and many of the terpenes are derivatives of cymene.

Counter to the assertion by the Examiner that "simple elements like carbon and hydrogen" would be derivatives of lecithin, a person of skill in the art would understand that a parent compound and its derivative are structurally related. Thus, a person of ordinary skill in the art would readily recognize that a derivative of lecithin (i) would be able to be prepared from lecithin by a simple chemical process, and (ii) would have a recognizable core skeleton of lecithin. Applicant respectfully submits that the meaning of the term "derivative" would be clear to a person of ordinary skill in the art and that the claims fully comply with the definiteness requirement of section 112.

## II. REJECTION UNDER 35 U.S.C. § 102(b)

The Examiner has rejected claims 1, 4, 5 and 8-11 under 35 U.S.C. §102(b), as being anticipated by Hsieh et al. (U.S. 5,424,085). The Examiner states that "Hsieh et al. teaches nuts or seeds coated with emulsifier (Abstract), lecithin (column 5, line 22) optionally with chocolate (Abstract)." Applicant respectfully submits that Hsieh et al. do not teach or suggest the presently claimed invention for at least the following reasons.

Applicant notes that the emulsifier mentioned in the abstract is a "protective alpha-tending emulsifier." The specification discloses that the protective alpha-tending emulsifiers are acetylated monoglycerides, propylene glycol esters and lactylated monoglycerides. See Hsieh *et al.*, Col. 6, lines 18-32. Hsieh *et al.* do not disclose that lecithin is a protective alpha-tending emulsifier.

Applicant respectfully submits that Hsieh *et al.* does not teach or suggest the presently claimed food additive in a granulate form comprising a plant natural product having a spherical surface, and a coating comprising at least one of lecithin and a lecithin derivative, wherein the lecithin and/or lecithin derivative is present in an amount greater than about 50 percent by weight of the coating. Thus, Applicant respectfully requests that the rejection under 35 U.S.C. §102(b) be withdrawn.

### III. REJECTION UNDER 35 U.S.C. § 103

The Examiner has rejected claims 1-13 under 35 U.S.C. §103, as being unpatentable over Belzowski *et al.* (U.S. 6,207,207) and Domb (U.S. 5,188,837). Applicant respectfully submits that the presently claimed invention is patentable over Belzowski *et al.* and Domb for at least the following reasons.

As the Examiner acknowledges, Belzowski *et al.* “does not teach lecithin, phosphatidyl serine, wax, thickness of coatings, and amount of lecithin.” Office Action of December 10, 2007 at page 4. Belzowski *et al.* also do not teach or suggest the coating of a plant natural product having a spherical surface.

Domb is directed to an entirely different field than that of the present invention. Domb is directed to “the area of controlled delivery systems, including pharmaceuticals.” Domb, Col. 1, lines 9-10. Domb does not teach or suggest the coating of a plant natural product having a spherical surface. As Domb is directed to a wholly difference field of endeavor than the claimed invention, there would be no motivation to combine Domb with Belzowski in an attempt to arrive at the presently claimed invention.

Moreover, neither Belzowski *et al.* nor Domb teach or suggest a plant natural product having a spherical surface. Also, neither Belzowski *et al.* nor Domb teach or suggest the coating of such a plant natural product with a coating comprising at least one of lecithin and a

lecithin derivative. Thus, any combination of Belzowski *et al.* and Domb would fail to arrive at the presently claimed invention.

In view of the foregoing comments, Applicant respectfully requests that the rejection under 35 U.S.C. §103 over Belzowski *et al.* and Domb be withdrawn.

#### IV. CONCLUSION

Applicant respectfully submits that the pending claims are in condition for allowance and requests that such action be taken. If for any reason the Examiner believes that prosecution of this application would be advanced by contact with the Applicant's attorney, the Examiner is invited to contact the undersigned at the telephone number below.

A separate Petition for Extension of Time is submitted herewith. Should any other fees be due, however, please charge such fees to Deposit Account No. 11-0600.

Respectfully submitted,  
KENYON & KENYON LLP

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